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No. 07-701

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IN THE

Supreme Court of the United States

STEVEN MACARTHUR, ET AL., PETITIONERS

v.

SAN JUAN COUNTY; SAN JUAN HEALTH SERVICES DISTRICT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY BRIEF

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NOW COMES THE PETITIONERS, pursuant to Supreme Court Rule 15.6, to reply to those issues raised by the Health District's Defendants' response brief, as follows:

I. Lack of the Respondents' response to the Petitioner's arguments demonstrates the Petitioners' arguments are irrebuttable and resolve the conflicts in Indian law that have plagued all the Courts.

The Objections' lack of response to the Petitioners' arguments shows this case can open new doors for peace, equality and justice in all Indian Nation Executive Agreement Courts. All Indian conflicts are resolved in this case. Respondents unanimously acquiesce to Petitioners' arguments. United States citizen's lives and rights are at stake here.

(a) Courts carrying out the consummation of Treaties and Executive Agreements are entitled to be given 'full force and effect' of their decrees, orders, and judgments. Pet. 12-14, 18. 33-34. Navajo Nation v. United States, Federal Circuit Court of Appeals, 2006-2059, Sept. 13, 2007 (Federal trust obligation to the Navajo Nation), or Pink [1], Belmont [2], Curtiss [3], Dames [4];Missouri v. Holland, 252 U.S. 416, 432 (1920) Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579, 585-86 (1952). All the Objection

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[1] U.S. v. Pink, 315 U.S. 203,242 (1942)
[2] U.S. v. Belmont, 301 U.S. 324, 329-330 (1937)
[3] U.S. v. Curtiss-Wright Export Corp. 299 U.S. 304, 319 (1936)
[4] Dames & Moore v. Regan, 453 U.S. 654, 668 (1981)

states is that the Executive Agreement fails to 'specifically' identify 'jurisdiction'. Obj. pg. 10. The Executive Agreement identifies only two sources of law that apply within the Navajo Nation: (1) Navajo law and (2) the Indian Civil Rights Act. Pet. App. pg. 549a. All Courts looking at the Indian Civil Rights Act have found it absolutely to be jurisdictional for Tribal and Federal and State Courts. Santa Clara Pueblo v. Martinez, 436 U.S. 49,54, 59 65-66, 71-72, 98 S.Ct. 1670, 56 L.Ed.2d 106 (1978) (emphasis added), and McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164 (1973), prohibiting state law and courts from having authority within the Navajo Nation. To read treaties and executive agreements as drafted by the U.S. and unchallenged by the U.S. unfavorably against the Indian Nations, singles them out over all others contracting with the U.S. Kinney v. Clark, 1844 U.S. Lexis 32, *, 43 U.S. 76. There is no Article III authority for doing so.

(b) **Article III courts have no authority to apply Crow Nation law to the Navajo Nation**. Pet. Pg. 29-30. See Pet. Appendix pg. 140a as to why the District Court applied the "Montana" doctrine (Montana v. United States 450 U.S. 544, 565-566 (1981) and its progeny [5]) under protest. The Objection offers no law or facts to rebut this reasoning.

(c) **Congress has preempted Montana's doctrine**. Pet. Pg. 28.

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[5] Atkinson Trading Post v. Shirley, 532 U.S. 645, 653 (2001); Strate v. A-1 Contractors, 520 U.S. 438, 453 (1997; and Nevada v. Hicks, 533 U.S. 353 (2001).

Congress has repealed the allotment act cited in Montana, and Courts must rule as it never existed. Ex Parte McCardle, 74 U.S. 506 (1868)). See Petition pg. 28 fn. 22. Pet. App. 190a-191a. The presumption against jurisdiction of Tribal Courts over non Indians is specifically reversed in 25 U.S.C. 3651(5) and (6), passed in response to Montana. Pet. App. 204a, 388a fn. 144, among all other statutes in fn. 22.

(d) **The Atkinson ruling was in error as applied to the Navajo Nation.** It failed to do a complete analysis of all the laws, treaties and statutes , etc. under a National Farmers Union Ins. Cos. v. Crow Tribe, 471 U. S. 845, 855-856 (1985) (Pet. Pg. 29) analysis. Without authority, it applied Crow law to the Navajo Nation, contrary to Congressional intent. Pet. App. 140a.

(e) **Congress never gave its required Article III sec. 1 and 2 authority to Federal Courts to review, displace, diminish Navajo Nation Tribal Court authority.** Pet. Pg. 30. See Santa Clara Pueblo v. Martinez, 436 U.S. 49, 65-66 (1978). U.S. v. Lara, 541 U.S. 193 (2004)(holding Congress' power in Indian affairs is plenary and exclusive) Lone Wolf v. Hitchcock, 187 U.S. 553, 565, 23 S.Ct. 216, 221, 47 L.Ed. 299 (1903)

(f) All other branches of law are superior in Indian affairs to the Article III branch. Pet. Pg. 30. Lara, and Lone Wolf.

(g) **The Navajo Nation was exercising its self-determination authority as mandated by International and National law, that precludes any state or local interests to the contrary.** Pet. Pg. 30-

31. See Pet. Pg. 31-35 and pg. 29 for a list of the Treaties involved.

(h) **State Immunity does not apply to these County and Health District quasi-corporate political subdivision respondents.** Pet. Pg. 10.

(i) **Utah immunity laws and qualified immunity does not apply for Treaty violations or Navajo law violations.** Pet. Pg. 24, 25, 27.
Respondents unanimously acquiesce to these arguments.

II. The Respondents Objection is full of material omissions and invites the Court to rely on colloquy contrary to the Navajo Courts' findings and commit error.

(a) Parties. As an initial matter, the Respondents' list of parties, Objection pg. ii, fails to list Truck/Farmer's Insurance/Zurich Financial services and Mr. R. Dennis Ickes as parties named in the Tribal Court action and named here. They are listed in the Objection fn. 1. They file no waiver or response to the petition. The San Juan County respondents listed as parties have not filed a waiver of their answer through attorney Mr. Trentadue, and therefore concede to the Petitioner's arguments, and facts, that San Juan County and its Commissioners, and County Attorney Halls were controlling the Health District when it was violating Navajo law and the Health District's Indian Health Service Contract, and state and federal law as well. Petition pg. 24 fn. 21. The Tenth Circuit's reliance on colloquy saying the county's role was 'tangential' is in clear error. Therefore, the County and County officials,

Truck and Mr. Ickes, acquiesce to this Court's acceptance of this Petition and the Petitioner's facts. [6] The Petition pg. ii correctly lists the parties before this Court.

(b) Respondents Restatement of the Case omits material facts, fails to cite to the record and appendix, and is just colloquy.

Permanent harm to Petitioners and the People is found absolutely.

The key fact is that this primarily white County-run Health District (undenied by the Health District or County in this objection), had a staff of doctors, who *knew* (1) of the Respondents billing program of privately billing Navajo Nation I.H.S. covered residents and (2) what happens to insulin diabetic patients when they go without glucometer strips and insulin and clinic care. They *knew* of the diabetes epidemic in the area. Statistics showed them the dependency of the population of several thousands of Native Americans on the clinics. These respondents saw, *by their own statistics*, the plummeting numbers of patients to the clinics within the Navajo Nation, and were on judicial notice of the harms to the petitioners by their billing of patients, demanding of payment at the time of service and producing certified degree of Indian blood certificates, being summoned to STATE court, threatened with forfeiture or jail. They knew of the irreparable harm to the names, reputations, economic livelihood and professional careers of the

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[6] The waiver filed by Mr. Harrison covers those parties not part of the Tribal action and who are not before this Court.

Petitioners. They were counseled by multiple attorneys and law firms. And, *realizing these harms*, lied to the Navajo Court about them initially, through Truck financed attorney aware of the litigation, and then ***kept right on doing their actions anyway***. Pet. App. 476a. A greater display of intent to permanently harm petitioners and kill a vulnerable population would be difficult to find.

Aside from the foregoing facts, other facts omitted are (1) the respondents counterclaimed in Navajo Court and had a full hearing with live witnesses, examination and cross examination and lost; (2) the Respondents did not so much as affirmatively file for relief in the lower U.S. District Court by counterclaims for relief, save Truck and Mr. Ickes; (3) They could have sought immediate relief from the Tribal Court, if jurisdiction did not exist, by seeking an extraordinary writ or seeking injunctive relief in Federal Court, and chose to litigate their false Navajo fraud claims instead; (4) the Navajo Court orders to be enforceD are not vague or amorphous...Objection pg. 5.. but designate Federal Courts to simply enforce a process of merely calculating back pay, rehiring of defendants if for only one day in their medical provider capacity, calculating the fines that change daily, while leaving any questions as to mootness or impossibility to the Navajo Court to determine as factual issues. Such overseeing of processes is not difficult as federal courts have overseen school desegregation, election processes, and the like. Carrying out these Navajo orders is simple. A Federal Court simply says carry out these orders, if the Petitioners need help the U.S. Marshalls will confiscate property and bank accounts with federal court orders, and if there are any questions by

Respondents, they need to be directed to the Navajo Court. Contrary to the orders being amorphous, the Navajo Court found all liability for the case in chief to be 'ABSOLUTE', a fact the Respondents omit. Pet. Ap. pg. 491. The only facts left in the case in chief go to amounts of permanent damages under the BIA approved Navajo Nation Rule 65 Rule of Civil Procedure. Pet. Ap. 492a .

(c) Respondents misconceive and misconstrue Navajo law.

The Objection states the Petitioners brought the interests of the Navajo patients to the Court.

(i) **standing.** Under Navajo law, customs and traditions, all persons, have a 'right' to speak freely to identify harms to others. Mrs. Singer had an 'in law' tribal status and Mr. Riggs and Dickson had enrolled tribal status and all had a corresponding duty to look out for their class, the tribe itself, including patients and the Court itself. Federal standing doctrines do not displace Navajo customs. (Santa Clara).

(ii) **The Objection pg. 3, makes the claims of Petitioners sound trivial**, without specifying any specific claims Petitioners raised in Navajo Court that were 'state' or 'federal' law, without citing to the Navajo orders or appendix records or petition. It was important that in granting ONLY NAVAJO LAW RELIEF, the Navajo Court observed that the Respondents were violating all laws binding upon them. (Pet.

App. 211a, 219a, 225a, 479a). Respondents don't mention that Utah law is applicable here as it disclaims any authority over Indian Nation, in keeping with it becoming a territory after the Treaty of Guadalupe Hidalgo, that promised only the federal government would have authority over Indian Nations within Mexican territory being turned over to the United States, and all other subsequent Navajo treaties. It was appropriate to raise state issues disclaiming authority within the Navajo Nation.

III. Contrary to the Objection's assertion, several reasons were raised as to why this Petition should be accepted.

Pursuant to Supreme Court Rule 10, the Petitioners listed **SEVEN** reasons, ***not one*** 'conflict' as Respondents assert, for accepting the petition, also discussed by the District Court. Pet. Pg. 26-29.

a. **Supreme Court conflicts.**

(1) *This* Court has identified that Indian law goes in two directions and is 'schizophrenic', as found in Lara. Petition pg. 10. Such identification of the confusing, unpredictable, and crazy area of Indian law, standing alone, is reason enough to grant this petition and is a question of national importance requiring clarification.

(2) This Court's ruling in Atkinson is in direct variance with National Farmers Union Ins. Cos. v. Crow Tribe, 471 U. S. 845, 855-856 (1985) analysis, of the Navajo Court's and this Court's requirement to

examine its own authority . Freytag v. Commissioner, 501 U.S. 868(1991)(J. Scalia concurrence). Petition pg. 26 citing to Appendix pg. 140a.

(3) The Tenth Circuit ruling below is the exact opposite of this Court's holding in U.S. v. Lara, 541 U.S. 193 (2004) because it subjects all other branches of law to the judicially created "Montana" doctrine, instead of Article III Courts being bound by Congress and the Executive branches as Lara holds. *Respondents fail to mention Lara.*

(4) The "Montana" Court identified exceptions to its decision in its own footnote 5. The Navajo Nation is like unto the Cherokee and Choctaw exceptions to Montana. Petition pg. 30. McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164 (1973); Warren Trading Post Co. v. Arizona Tax Comm'n, 380 U.S. 685, 690 (1965); Williams v. Lee, 358 U.S. 217, (1959.

(5) Objection page 10 says that tribal court authority is an Article III federal question citing to the Tenth Circuits' reliance upon " Nat'l Farmers Union, 471 U.S. at 852; Wilson v. Marchington, 127 F.3d 805, 813 (9th Cir.1997)." Pet. App. 15a. This holding is diametrically opposite the Supreme Court holding in Santa Clara Pueblo and Lone Wolf *supra*, and Minor v . Muskegee Creek Nation, 2007 U.S. App. LEXIS 22432, issued September 19,2007 that holds Tribal Court authority over non Indians for acts occurring within the Indian Nations is a non judiciable question of which only Congress and the Executive branches authorize and execute the definitions of Navajo Court authority over both Indians and non Indians alike.

(b) Circuit Conflicts. The Tenth Circuit checkerboards the state and Navajo Nation lands in its decision contrary to 18 U.S.C. 1151, Seymour v. Superintendent of Washington State Penitentiary, 368 U.S. 351, 358(1962); United States v. Mazurie, 419 U.S. 544, 557(1975) and Hilderbrand v. Taylor, 327 F.2d 205, 207(10th Cir. 1964), the Aneth Extension Act, among others. Discussed in Petition pg. 17. Respondents do not dispute this fact. Also, the Eighth Circuit conflicts with the Tenth Circuit as to applying comity or full faith and credit. Standly v. Roberts, *59 F. 836, 845 (8th Cir. 1894), appeal dismissed, 166 U.S. 1177 (1896)*, and Raymond v.Raymond, *83 F. 721, 722 (8th Cir. 1897)*. Cohen, *Handbook* (1942 ed.) at 145 & nn. 209-210; *id.* at 275 & nn. 73-74. See, Petition pg. 26 referencing Appendix pg. 241a.

(c) State Conflicts and Circuit Conflicts. As to comity versus full faith and credit, Pet. App. 241a and 243a, as referenced on page 26 of the Petition directly references the MacArthur's district Courts in depth discussion indentifying the conflicts;

> *See, United States ex rel. Mackey v. Coxe, 59 U.S. (18 How.) 100, 103, 15 L. Ed. 299 (1856)*, and three Eighth Circuit cases circa 1984, including *Standley v. Roberts*. *Handbook* (1982 ed.) at 385 & nn. 47-49. New Mexico gives full faith and credit to Navajo Court decrees, orders and judgments. *Halwood v. CowboyAuto Sales, Inc., 1997 NMCA 98, 124 N.M. 77, 79-82, 946 P.2d 1088, 1090-1093 (Ct. App. 1997)* (Navajo court "award of punitive damages against a non-Indian for conduct occurring on a Navajo reservation is entitled to full faith and credit in New Mexico

courts"), *cert.denied, 123 N.M. 626, 944 P.2d 274 (1997)*

Pet. App. Pg. 243a.

(d) **Conflicts with Congress and the Executive branches**

The Lara decision itself in all its concurrences identify these conflicts. Pet. Pg. 10 and 25.

IV. The Respondents' Restatement of the question is already inherent in Petitioner's question, along with other inherent questions, as well.

Respondents ask if the "Montana" doctrine (Petition pg. 10 fn. 4) was applied correctly by the Court's below. Objection pg. i. This question is inherent in the Petitioner's question. Pursuant to Supreme Court Rule 14. 1.(a) the petitioners properly questioned this Court's and all Article III Court's jurisdictional authority.

> " Do Article III Courts have any subject matter jurisdiction to do anything other than give full force and effect to Navajo Nation Court civil law judgments, decrees, and orders of all types, including these orders?"

This question covers all the other questions inherent in this case.

V. The Objection identifies the Effects of Not Accepting this Petition

By relying on the smoke and mirrors of mere colloquy, the Federal Courts are in a state of denial that white people, and some Indians, still wish to kill or permanently harm Indians and non Indians who are whistleblowers, and seek to protect Indians. This case does not stand alone. See, Ford Motor Co. v. Todecheene, 394 F.3d 1170 (9th Cir. 2005) (non Indian manufacturers can send materials with defective parts to Indian reservations without fear of suit even when death results). See also this case, dismissing a non Indian insurer who refuses to pay on the policy with non Indian business, for legal injuries occurring on land set aside for the Navajo Nation, and who also was directly involved in the litigation's misuse of the Court's processes. Objection fn. 1. Not accepting this petition makes a mockery and joke of all Navajo law, Navajo bill of rights, the Navajo Nation Courts processes, a Navajo Judge's work, of these petitioners legal rights and of all Indian lives, that have an otherwise Congressional and Executive entitlement to the protections of the only law of the area, the Supreme Law of the Land. (25 USC §§1322-1326, 1303).

Further, contrary to Minor v . Muskegee Creek Nation, 2007 U.S. App. LEXIS 22432, issued September 19,2007, (Objection pg. 8-9) this case is a *de facto* quiet title action establishing state law within the Navajo Nation outside of all the numerous Congressional statutes to the opposite, without the Navajo Nation even being a party to the case. See, 71st Congress, 1st session, Senate Report Document 64 for intent of Congress for the area. Montana deprives

Indian Nation's Courts of authority, without the Tribe being a party, something suing directly can not accomplish by Minor.

VI. CONCLUSION

For all the foregoing reasons, this petition should be accepted and as immediately as possible.

Respectfully submitted,

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